

**IN THE COURT OF APPEALS FOR THE  
SIXTH DISTRICT OF TEXAS AT TEXARKANA**

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**MICHAEL ANTHONY HAMMACK,**  
APPELLANT

**v.**

**THE STATE OF TEXAS,**  
APPELLEE

FILED IN  
6th COURT OF APPEALS  
TEXARKANA, TEXAS

5/1/2019 8:16:33 PM

DEBBIE AUTREY

**No. 06-18-00212-CR**

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FILED IN  
6th COURT OF APPEALS  
~~TEXARKANA, TEXAS~~

5/2/2019 4:09:00 PM

DEBBIE AUTREY  
Clerk

**STATE'S RESPONSE BRIEF**

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ON APPEAL FROM THE 354th DISTRICT COURT  
HUNT COUNTY, TEXAS

TRIAL COURT CAUSE NUMBER 32355CR  
THE HONORABLE KELI AIKEN, JUDGE PRESIDING

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**Oral Argument Not Requested**  
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**MICHAEL ANTHONY HAMMACK,  
APPELLANT**

**v.**

**THE STATE OF TEXAS,  
APPELLEE**

**No. 06-18-00212-CR**

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**STATE’S RESPONSE BRIEF**

---

**TO THE HONORABLE COURT OF APPEALS:**

The STATE OF TEXAS (State), Appellee, responds to Appellant’s brief in Cause No. 32355CR, presided by the Honorable Judge Keli M. Aiken, in the 354th Judicial District Court, Hunt County, Texas. The State respectfully requests that the judgment of conviction and sentence be affirmed.

**1. STATEMENT OF THE CASE.**

On the 5 December 2018, Appellant was found guilty of Interference with Child Custody (Tex. Pen. Code § 25.03). (C.L.R., Vol. 1, pg. 112-127). Appellant was sentenced to 2 years confinement in a prison in State Jail Texas Department of Criminal Justice and a \$10,000 fine. The sentence of confinement was suspended and the Defendant was placed on Community Supervision for 5 years. (C.L.R., Vol.

1, pg. 112). Appellant filed this appeal on 11 April 2019 alleging legal insufficiency related to knowledge of the express terms of a court order granting sole managing conservatorship to the Department of Family and Protective Services. The State responds alleging that the jury had sufficient evidence before them to sustain every element of the offense and respectfully requests that judgment of conviction and sentence be affirmed.

## **2. STATEMENT REGARDING ORAL ARGUMENT.**

Pursuant to Tex. R. App. P., Rule 39.1, oral argument is unnecessary because: “(c) the facts and legal arguments are adequately presented in the briefs and record;” and “(d) the decisional process would not be significantly aided by oral arguments.” The court has sufficient information to decide this case without oral argument, based on the filings of the parties.

## **3. SUMMARY OF ARGUMENT.**

Appellant was charged by indictment with Interference with Child Custody. (C.R., Vol. 1, pg. 5). The State presented evidence concerning each and every element of the offense at trial. Appellant was found guilty beyond a reasonable doubt by the jury on 5 December 2018. (C.R.R., Vol. 6, pg. 206-207 and C.R., Vol. 1, Pg. 112). Appellant raises the issue of legal insufficiency due to lack of notice of the “express terms” of a judgment or order. Evidence was presented at trial indicating that Appellant’s custody was taken away because “continuation in the

home of the Parents would be contrary to the child's welfare.” (C.R.R., Vol. 8, pg. 4).

State and Appellant entered into a written stipulation of fact that established that validity of the court order and writ of attachment from the 354th District Court, stating “As of 27 February 2018, the Department of Family and Protective Services was by Court Order granted sole managing conservatorship of the Defendant's minor child, [D.H.]. This Order gave the Department of Family and Protective Services the sole right of possession and physical custody of the minor child as well as the right to consent to marriage. As of the date of the Courts' Order for Protection, the defendant Michael A. Hammack, did not have a legal right to possess, take, or retain his minor child. He by Court Order also did not have the right to consent to the marriage of his daughter.” (C.R.R., Vol. 8, pg. 3). Appellant's defense at trial was that he was not served with a copy of the Order for Protection or the Writ of Attachment.

The State provided evidence that the Defendant knew the order took away his custody because he was informed that the Department of Family and Protective Services had custody of her by phone, that he actively avoided service of the order and writ of attachment on multiple occasions, and that he took his daughter and her boyfriend to Oklahoma to get them married in defiance of the authority of the State and the Order for Protection. The jury reasonably inferred from the circumstances

that the Appellant knew the “express terms” of the order took away his right to physical custody and that he intentionally and knowingly violated that order. In “considering all of the evidence in the light most favorable to the verdict” the jury was “rationally justified in finding guilt beyond a reasonable doubt.” *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010).

**4. ISSUE PRESENTED: *Whether the evidence at trial was legally sufficient in order to sustain a conviction of Interference with Child Custody?***

**a. STATEMENT OF FACTS.**

(1). Appellant was charged by indictment of the offense of Interference with Child Custody. (C.R., Vol. 1, pg. 5).

(2). Appellant was found guilty at a trial by jury on 5 December 2018. (C.R., Vol. 1, pg. 112-127).

**TESTIMONY OF DET. MICHAEL MCADA**

(3). Det. McAda is a Detective with Commerce Police Department. He was assigned to investigate after the Department of Family and Protective Services informed him that the Appellant had violated a court order taking his daughter, D.H., to Oklahoma to get her married to his daughter’s boyfriend, DeAndre Manning Jennings. (C.R.R., Vol. 6, pg. 20 and C.R.R., Vol. 8, pg. 16)

(4). Det. McAda reviewed the Protective Order, signed by the Honorable Judge Aiken of the 354th District Court on 27 February 2018, granting sole

managing conservatorship of Appellant's daughter D.H. to the Department of Family and Protective Services, after a finding that "continuation in the home of the parents would be contrary to the child's welfare." (C.R.R., Vol. 6, pg. 21-32 and C.R.R., Vol. 8, pg. 16)

(5). Det. McAda also was able to review the Writ of Attachment authorizing the law enforcement to deliver D.H. to the Department of Family and Protective Services. (C.R.R., Vol. 6, pg. 21-32 and C.R.R., Vol. 8, Pg. 11).

(6). Det. McAda determined that these orders were valid during the course of his investigation and that the Department of Family and Protective Services had taken custody of D.H. (C.R.R., Vol. 6. Pg. 33-34).

(7). D.H was determined by Det. McAda to be the 16 year old daughter of the Appellant at the time he began investigating the case, after 27 Ferbruary 2018. (C.R.R., Vol. 6, pg. 34).

(8). Prior to the order being signed, D.H. resided with Appellant in Commerce, TX in Hunt County. (C.R.R., Vol. 6, pg. 34).

(9). Det. McAda contacted the clerk's office in Choctaw County, Oklahoma where the Appellant wed his daughter to her live in boyfriend, DeAndre Manning Jennings. The Clerk's Office informed him that the Defendant was physically present and signed permission for D.H. to marry Mr. Manning-Jennings in violation of the order of protection. (C.R.R., Vol. 6, pg. 35).

(10). The State offered through Det. McAda, State's Exhibit 1, a Stipulation of Fact that the Protective Order was valid, gave sole managing conservatorship to the Department of Family and Protective Services, and that as of 27 February 2018 pursuant to the order the Appellant did not have a right to physically possess his daughter, D.H., or consent to her marriage. The State also offered State's Exhibit 2, the protective order; State's Exhibit, the writ of attachment; and State's Exhibit 4, another stipulation of fact regarding the validity of the writ of attachment. (C.R.R., Vol. 6, pg. 22-23 and 32).

### **TESTIMONY OF OFFICER RHODES**

(11). Officer Rhodes is a police officer with the Commerce Police Department. He assisted with this case on 27 February 2018. (C.R.R., Vol. 6, pg. 39).

(12). On 27 February 2018, Commerce PD received a call from CPS workers to assist in locating a run-away juvenile that ran from the Greenville CPS Office. CPS believed the daughter went back to Appellant's home in Commerce, Tx. So he went to look for D.H. there. (C.R.R., Vol. 6, pg. 39).

(13). Appellant answered the door and stated his daughter was not home and that he had not heard from her since she went to school. (C.R.R., Vol. 6, pg. 41).

(14). Officer Rhodes stated that Appellant knew that D.H. had already been picked up by CPS on the evening of 27 February 2018. (C.R.R., Vol. 6, pg. 42).

(15). Officer Rhodes searched Appellant's house for D.H., but she was not there. He then went with CPS to D.H.'s boyfriend's house, and then to the house of Appellant's mother. Officer Rhodes left the scene and was replaced by Officer Cantera. (C.R.R., Vol. 6, pg. 46-47).

(16). Officer Rhodes stated based on his observations D.H. had recently been at the house. He stated that he informed Appellant "that we were in search of Daphney due to her being missing from the custody of Child Protective Services." He further went on to explain that D.H. was in the custody of Child Protective Services. Officer Rhodes stated Appellant did not seem surprised when informed that Child Protective Services had custody of D.H. and further testified as that it was his opinion based on their interaction that Appellant knew about the court's custody ruling. (C.R.R., Vol. 6, pg. 49-51).

### **TESTIMONY OF OFFICER CANTERA**

(17). Officer Cantera was working as a police officer for Commerce Police Department on 27 February 2018. Officer Cantera received the same briefing as every other officer, that they were attempting to locate D.H. who had run away from CPS custody after being picked up from her school by CPS. (C.R.R., Vol. 6, pg. 55).

(18). Officer Cantera went over to the house of the Appellant's mother. He explained to D.H.'s grandmother that there was a writ of attachment authorizing him to pick her up and transport D.H. to CPS. (C.R.R., Vol. 6, pg. 57).

(19). Appellant's mother gave consent for Officer Cantera to come in and search the house. Officer Cantera heard movement and voices coming from the attic. He observed Appellant half-way up in the attic. Officer Cantera thought that based on the situation someone was trying to hide in the attic. (C.R.R., Vol. 6, pg. 57-58).

(20). Officer Cantera stated at that point he knew that Appellant had already been asked where D.H. was located and denied any knowledge, but as Appellant was coming down from the attic he became argumentative and confrontational. He began talking about rights being violated and the need for a search warrant. At that point, Appellant's mother revoked consent to be in her property. (C.R.R., Vol. 6, pg. 59-60).

(21). Officer Cantera stated that Appellant knew that CPS had custody of D.H. and that CPS and Commerce PD were searching for her. CPS investigators were in a vehicle three or four feet away as the Appellant was yelling at Officer Cantera. (C.R.R., Vol. 6, pg. 61-62).

(22). Officer Cantera said that based on his interactions with the Appellant it was his opinion that Appellant knew that there was an order of protection giving

custody to CPS. He stated that Appellant kicked them off the property and if he had tried to deliver the order it would not have been effective. (C.R.R., Vol. 6, pg. 63).

### **TESTIMONY OF INV. AMBER DAVIDSON**

(23). Inv. Amber Davidson worked for the Department of Family and Protective Services during the February 2018 timeframe. Inv Davidson was an investigator investigating allegations of child abuse and neglect. She was assigned the case involving D.H. (C.R.R., Vol. 6, pg. 71).

(24). Inv. Davidson described that on 23 February 2018 the school counselor for D.H. called to report allegations D.H. had made regarding Appellant. Inv. Davidson called Appellant who told Inv. Davidson that she needed to get a real job. (C.R.R., Vol. 6, pg. 72).

(25). When Inv. Davidson went to his house to investigate, Appellant told her to get off his property and to come back with a court order. (C.R.R., Vol. 6, pg. 73).

(26). Inv. Davison sought and obtained a protective order placing custody in the care of the Department of Family and Protective Services as well as a writ of attachment. (C.R.R., Vol. 6, pg. 80).

(27). Inv. Davidson went with Inv. Victor Cardoso to retrieve D.H. from Commerce High School. (C.R.R., Vol. 6, pg. 81).

(28). Inv. Davidson testified that when she got back to her office with D.H. she called the Appellant, “letting him know we had a Writ of Attachment, Order of

Protection, to pick up Daphney from school. We picked her up from school and that we had her back at the office. And I had asked him to come meet me at the office so we could get him the paperwork and to speak with me about the situation.” (C.R.R., Vol. 6, pg. 81).

(29). It was Inv. Davidson’s opinion that Appellant was fully aware that CPS had custody of D.H. at this point on 27 February 2018 (all prior to D.H.’s escape from CPS custody later that night). (C.R.R., Vol. 6, pg. 82).

(30). Inv. Davidson testified that after she let Appellant know that CPS had custody that Appellant was upset. He stated “he dealt with Judge Bench only. He didn’t—and that’s the judge I needed to use.” She replied that Appellant couldn’t dictate which judge she went to to get the Court Order. (C.R.R., Vol. 6, pg. 84).

(31). Shortly after D.H. ran away, Inv. Testified that she received a phone call from Appellant asking where his daughter was. Based on the timing of that phone call and the ongoing search it was the opinion of Inv. Davidson that Appellant already knew his daughter was missing. (C.R.R., Vol. 6, pg. 85).

(32). Inv. Davidson then described searching for D.H. once it was found that she had escaped the Department of Family and Protective Services Office with other investigators between 27 February 2018 and 6 March 2018. An anonymous phone call stated D.H. had been seen at Appellant’s house. On 6 March 2018, D.H. was

retrieved from the home of the Appellant by Commerce PD and Inv. Davidson. (C.R.R., Vol. 6, pg. 89-90).

(33). D.H. told Inv. Davidson that when she escaped her Dad and grandmother took her to Oklahoma to get married. (C.R.R., Vol. 6, pg. 89-90).

(34). Appellant did not have permission from the Department of Family and Protective Services to consent to marriage on his daughter's behalf. (C.R.R., Vol. 6, pg. 91).

(35). On cross examination, when asked whether Inv. Davidson knew the Appellant was listening when she explained to Appellant the contents of the Order and that CPS had custody, Inv. Davison replied that Appellant was listening. She stated, "I told him and he agreed after." (C.R.R., Vol. 6, pg. 95-96).

(36). Inv. Davidson testified that Appellant refused to meet with her regarding service or the investigation. (C.R.R., Vol. 6, pg. 97).

(37). Even if Inv. Davidson had a physical copy of the Protective Order and Writ of attachment with her, she would not have been able to serve it because Appellant kicked her off the property. Inv. Davidson further testified that she gave Appellant the opportunity to meet and receive the Court Order and Writ of Attachment. (C.R.R., Vol. 6, pg. 98-99).

(38). Inv. Davidson was told on multiple occasions to get off his property as they searched for D.H. and tried to discuss the case. (C.R.R., Vol. 6, pg. 101-102).

### **TESTIMONY OF MS. LAURA SUMNER**

(39). Ms. Sumner is a court clerk for Choctaw County, Oklahoma. As part of her duties she records marriage licenses and certificates. She was working there on 5 March 2018. (C.R.R., Vol. 6, pg. 104).

(40). She remembered the Appellant and the family because they “don’t have very many underage marriages.” (C.R.R., Vol. 6, pg. 105).

(41). Appellant presented his driver’s license and D.H.’s social security card and student ID for identification. The clerk’s office wanted a birth certificate to be certain, and made Appellant and daughter return home to go get one. They came back with a birth certificate. (C.R.R., Vol. 6, pg. 106).

(42). State’s Exhibit 6, an application for the marriage license, was admitted. Ms. Sumner identified the signatures and the Appellant in the courtroom. (C.R.R., Vol. 6, pg. 107-108).

### **TESTIMONY OF INV. VICTOR CARDOSO**

(43). Inv. Cardoso initially helped retrieve D.H. from Commerce High School on 27 February 2018. (C.R.R., Vol. 6, pg. 115).

(44). Inv. Cardoso was part of the general effort to find D.H. after she escaped custody and went back to her father on 27 February 2018. (C.R.R., Vol. 6, pg. 118).

### **TESTIMONY OF INV. ALVARADO TORRES**

(45). Inv. Torres was working with the Department of Family and Protective Services on 27 February 2018. He testified that he was with D.H. and Inv. Davidson at the Department's office in Greenville when D.H. escaped and was part of the effort to search for her. (C.R.R., Vol. 6, pg. 119-120).

(46). Inv. Torres went to Appellant's house and the house of Appellant's mother. He testified that Appellant did not appear to want CPS to be investigating at the house of Appellant's mother. He further testified that based on Appellant's demeanor any effort to give Appellant a copy of the Order for Protection and Writ of Attachment would have been thwarted by Appellant. (C.R.R., Vol. 6, pg. 127).

#### **TESTIMONY OF INV. RHONDA WEST**

(47). Inv. Rhonda West assisted in the search for D.H. after she escaped back to the Appellant. (C.R.R., Vol. 6, pg. 135).

(48). After D.H. returned to the Department of Family and Protective Services on 6 March 2018, Inv West was told by D.H. that she had been at her father's house. (C.R.R., Vol. 6, pg. 127).

(49). Inv. West stated that she was present when Inv. Davidson attempted to serve Mr. Hammack with the Court Order at his residence on 27 February 2018. (C.R.R., Vol. 6, pg. 137).

(50). Inv. West testified that Appellant told her and Inv. Davidson to get off his property when they tried to serve Appellant. She stated that Appellant knew who

they were and why they were there, to take custody of D.H. pursuant to the Court Order. (C.R.R., Vol. 6, pg. 138-139).

**b. ARGUMENT.**

**(1) Applicable Law: Elements of the Offense and Standard of Review.**

**(a). Elements of the Offense.** Tex. Pen. Code § 25.03 states in pertinent part, “(a) A person commits an offense if the person takes or retains a child younger than 18 years of age: (1) when the person knows that the person’s taking or retention violates the express terms of a judgment or order, including a temporary order, disposing of the child’s custody.” Interference with Child Custody does not require service of the actual order, but that a defendant had knowledge of the order and violates the express terms of the order.

**(b). Jury Allowed to Make Reasonable Inferences Based on the Evidence Concerning Knowledge.** In *Briggs v. State*, 807 S.W.2d 648, 649-651 (Tex. App.- Houston [1st Dist.] 1991), the defendants (biological parents) asserted that they did not know the express terms of the court order that took away custody of their child. In finding that they violated the court order by knowingly taking their child in violation of that order, the court stated that the jury was able to consider evidence that Child Protective Service workers had informed them by phone that they no longer had custody and that the child was in their custody. *Id.*

The court further stated, “The jury, as trier of fact, is the sole judge of a witness’s credibility and may believe all or any part of a witness’s testimony.” *Id at 651*.

(c). **Standard of Review- Legal Sufficiency.** Appellate courts conducting a legal sufficiency review are to consider all the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in a finding of guilt beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010). In determining whether the jury was rationally justified, an appellate court must consider the evidence presented, witness testimony, and all reasonable inferences to be drawn from the witnesses and testimony presented.

A jury is free to infer and find that the defendant has knowledge of the terms of the order based on the evidence and testimony presented. “The Jury is the sole judge of credibility and weight to be attached to the testimony of witnesses, and juries may draw multiple reasonable inferences from the facts so long as each is supported by the evidence presented at trial.” *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016).

(2) **Discussion.** Appellant had knowledge of the order granting sole managing conservatorship to the Department of Family and Protective Services. Appellant was aware of the allegations made by his daughter against him and was antagonistic to the Department of Family and Protective Services. The original outcry was made by Appellant’s daughter to a school counselor at Commerce High

School. Inv. Davidson phoned Appellant to inquire about the allegations on 23 February 2018. Instead of concern, Appellant was not cooperative and told Appellant to “get a real job.” Later, as Inv. Davidson attempted to talk with Appellant at his property, he kicked her off the property and told her to come back with a court order.

Based on the allegations of D.H. and the affidavit presented by the Department of Family and Protective Services, the 354th District Court determined that it was not in the best interest of the child to remain in Appellant’s home and issued a Protective Order and Writ of Attachment on 27 February 2018.

Inv. West testified that she and Inv. Davidson went to Appellant’s house on 27 February following the issuance of the Protective Order and Writ of Attachment. She stated that Appellant knew who they were and why they were there and that he told them to get off his property when they attempted to deliver the Protective Order to Appellant.

Inv. Davidson and Inv. Cardoso picked up D.H. from Commerce High School and took her to the Department of Family and Protective Services office in Greenville, TX. Once there, Inv. Davidson testified to telling Appellant on the phone about the contents of the order, that custody had been given to the Department of Family and Protective Services, and he was asked to come to the office to get a copy of the Protective Order. After being told that the Department had custody of D.H.

and that they were granted sole managing conservatorship, Appellant responded by complaining that the Department of Family and Protective Services should have gone to a different judge. When asked whether he understood the contents of the order, Appellant responded that he did. Shortly thereafter, D.H. escaped. D.H. later told investigators that from 27 February 2018 to 6 March 2018 she was with Appellant and Grandma.

Appellant called the Department of Family and Protective Services shortly after his daughter escaped and accusingly asked them where his daughter was. The timing of the phone call made Inv. Davidson believe that Appellant already knew that the daughter had escaped.

Investigators and law enforcement who were searching for D.H. all testified that Appellant was belligerent and thwarted their efforts to search for D.H. at his mother's house on 27 February 2018. All testified that based on their interactions with the Appellant that it was their opinion that Appellant understood who they were and why they were looking for D.H. Appellant did not appear shocked or surprised to learn that the Department of Family and Protective Services had been given custody of his daughter. All of his efforts were driven at thwarting the ability of the State to enforce the Protective Order in defiance of the 354th District Court and the Department of Family and Protective Services. On 5 March 2018, Appellant took his daughter to Oklahoma to consent to her marriage with DeAndre Manning-

Jennings. Upon her return, D.H. told Inv. Davidson that she had been with her Dad from 27 February 2018 to 6 March 2018 and that her father had consented to her marriage. This was in violation of the Protective Order issued by the 354th District Court in Hunt County, TX.

There is no requirement by statute or otherwise that a defendant is physically served with a copy of a protective order. The requirement is a knowing violation of the protective order. The evidence is overwhelming that Appellant understood the nature and purpose of the protective order, that he knew that it existed, that he resisted and actively avoided service of the order several times by throwing investigators off his property, that he was told about the contents of the order by phone by investigators from the Department of Family and Protective Services, and that the Appellant acted in open defiance of the order by taking and hiding his daughter (thwarting efforts to search for her) and that he took her to Oklahoma to consent to her underage marriage in defiance and in violation of the Protective Order issued by the 354th District Court on 27 February 2018. The timing of this marriage was aimed solely at preventing the Department of Family and Protective Services from exercising lawful custody. Appellant's actions indicate not just knowledge but open defiance.

## **5. CONCLUSION.**

The jury was given all the facts and evidence, weighed the credibility and testimony of the witnesses and found the Appellant guilty of the offense of Interfering with Child Custody. Appellant was informed of the contents of the order granting sole managing conservatorship to the Department of Family and Protective Services. His actions indicate that he actively avoided service and cooperating with law enforcement and the Department of Family and Protective Services in exercising lawful custody because was hiding his daughter, D.H., from the Department and took her to Oklahoma to prevent the Department of Family and Protective Services from exercising lawful custody. This was a knowing violation of the express terms of the order by taking his daughter, D.H., a child under the age of 18 in violation of the protective order granting custody to the Department of Family and Protective Services. When viewed in the light most favorable to the verdict there is more than sufficient evidence to show that Appellant acted in knowing violation of the Protective Order granting custody to the Department of Family and Protective Services by taking his child, D.H., in violation of that order.

6. **PRAYER.** The State requests that Appellant's conviction and sentence be affirmed.

Respectfully submitted,

**NOBLE D. WALKER, JR.**

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### **CERTIFICATE OF SERVICE**

A copy of the State's response brief has been delivered to Mrs. Jessica McDonald, attorney for Appellant, on 1 May 2019 pursuant to local rules.

*Christopher Bridger*  
**Christopher J. Bridger**  
Assistant District Attorney

### **CERTIFICATE OF COMPLIANCE AND WORD COUNT**

In accordance with Texas Rules of Appellate Procedure 9.4 (e) and (i), Appellee's response brief contains Times New Roman font, 14-point typeface of the body of the brief and contains 4,721 words, and was prepared on Microsoft Word 2013.

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